

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MALIK SHAKUR,

Plaintiff,

v.

DR. MILLER, et al.,

Defendants.

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Case No. 3:19-cv-14994 (BRM)

MEMORANDUM AND ORDER

THIS MATTER is opened to the Court by *pro se* Plaintiff Malik Shakur (“Plaintiff”), a prisoner currently confined at New Jersey State Prison in Trenton, New Jersey, upon the filing of a civil rights complaint, filed pursuant to 42 U.S.C. § 1983, and an application to proceed *in forma pauperis*. (ECF No. 1.) The Prison Litigation Reform Act of 1995 (the “Act”), which amends 28 U.S.C. § 1915, establishes certain financial requirements for prisoners who are attempting to bring a civil action *in forma pauperis*.

Under the Act, a prisoner bringing a civil action *in forma pauperis* must submit an affidavit, including a statement of all assets, which states that the prisoner is unable to pay the fee. 28 U.S.C. § 1915(a)(1). The prisoner also must submit a certified copy of his inmate trust fund account statement for the six-month period immediately preceding the filing of his complaint. 28 U.S.C. § 1915(a)(2). The prisoner must obtain this statement from the appropriate official of each prison at which he was or is confined. *Id.*

The entire fee to be paid in advance of filing a civil complaint is \$400. That fee includes a filing fee of \$350 plus an administrative fee of \$50, for a total of \$400. A prisoner who is granted *in forma pauperis* status will, instead, be assessed a filing fee of \$350 and will not be responsible for

the \$50 administrative fee. If *in forma pauperis* status is denied, the prisoner must pay the full \$400, including the \$350 filing fee and the \$50 administrative fee, before the complaint will be filed.

If the prisoner is granted *in forma pauperis* status, the prisoner must pay the full amount of the \$350 filing fee as follows. 28 U.S.C. § 1915(b)(1). In each month the amount in the prisoner's account exceeds \$10.00, until the \$350.00 filing fee is paid, the agency having custody of the prisoner shall assess, deduct from the prisoner's account, and forward to the Clerk of the Court, payment equal to 20% of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2).

Plaintiff may not have known when he submitted his Complaint that he must pay the filing fee, and even if the full filing fee, or any part of it, has been paid, the Court must dismiss the case if it finds the action is: (1) frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). If the Court dismisses the case for any of these reasons, the Act does not permit the prisoner to get his filing fee back.

In this action, Plaintiff failed to submit a copy of his inmate trust fund account statement for the six-month period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2). He submitted the required certification from a prison official, but he did not submit a copy of the account statement.

Under normal circumstances, the Court would administratively terminate this matter until Petitioner submits the required certified account statement. However, given the nature of Plaintiff's claims, *i.e.* denial of appropriate medical care for a potential stroke, the Court will instead grant Plaintiff temporary *in forma pauperis* status and conduct its *sua sponte* screening of the Complaint. Within 30 days of the date of this Order, Plaintiff must submit a certified copy of his six-month account statement. If Plaintiff fails to submit that statement, the Court will revoke Plaintiff's *in forma pauperis* status and administratively terminate the case until he provides the required documentation.

Federal law requires this Court to screen Plaintiff's Complaint for *sua sponte* dismissal prior to service, and to dismiss any claim if the claim fails to state a claim upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6) and/or to dismiss any defendant who is immune from suit. *See* 28 U.S.C. § 1915(e)(2)(B).

The Court has screened the Complaint in this action for dismissal and has determined Plaintiff's Eighth Amendment denial of medical care claim against Drs. Miller and Sanayuba for delaying/denying necessary medical tests for monetary reasons shall proceed.

Accordingly, and for good cause appearing,

IT IS on this 19th day of August 2019,

ORDERED that Plaintiff's application to proceed *in forma pauperis* is temporarily **GRANTED**; within 30 days of the date of this Order, Plaintiff must submit a certified copy of his six month account statement; if Plaintiff fails to submit that statement, the Court will revoke Plaintiff's *in forma pauperis* status and administratively terminate the case until he provides the required documentation; and it is further

ORDERED that the Complaint shall be filed; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(b), the Clerk shall serve a copy of this Order by regular mail upon the Attorney General of the State of New Jersey and the Warden of New Jersey State Prison; and it is further

ORDERED that Plaintiff is assessed a filing fee of \$350.00 and shall pay the entire filing fee in the manner set forth in this Order pursuant to 28 U.S.C. § 1915(b)(1) and (2), regardless of the outcome of the litigation, meaning that Plaintiff's case is administratively terminated or closed, § 1915 does not suspend installment payments of the filing fee or permit refund to the prisoner of the filing fee, or any part of it, that has already been paid; and it is further

ORDERED that pursuant to *Bruce v. Samuels*, 136 S. Ct. 627, 632 (2016), if Plaintiff owes fees for more than one court case, whether to a district or appellate court, under the Prison Litigation Reform Act (PLRA) provision governing the mandatory recoupment of filing fees, Plaintiff's monthly income is subject to a simultaneous, cumulative 20% deduction for *each* case a court has mandated a deduction under the PLRA; *i.e.*, Plaintiff would be subject to a 40% deduction if there are two such cases, a 60% deduction if there are three such cases, etc., until all fees have been paid in full; and it is further

ORDERED that pursuant to 28 U.S.C. § 1915(b)(2), in each month the amount in Plaintiff's account exceeds \$10.00, the agency having custody of Plaintiff shall assess, deduct from Plaintiff's account, and forward to the Clerk of the Court payment equal to 20% of the preceding month's income credited to Plaintiff's account, in accordance with *Bruce*, until the \$350.00 filing fee is paid. Each payment shall reference the civil docket numbers of the actions to which the payment should be credited; and it is further

ORDERED that Plaintiff's claims against Defendants Miller and Sanayuba shall **PROCEED** at this time; and it is further

ORDERED that, the Clerk shall mail to Plaintiff a transmittal letter explaining the procedure for completing United States Marshal ("Marshal") 285 Forms ("USM-285 Forms"); and it is further

ORDERED that, once the Marshal receives the USM-285 Forms from Plaintiff and the Marshal so alerts the Clerk, the Clerk shall issue summons in connection with each USM-285 Form that has been submitted by Plaintiff, and the Marshal shall serve summons, the Complaint and this Order to the address specified on each USM-285 Form, with all costs of service advanced by the United States; and it is further

ORDERED that Defendants shall file and serve a responsive pleading within the time specified by Federal Rule of Civil Procedure 12; and it is further

ORDERED that the Clerk of the Court shall serve Plaintiff with copies of this Order via regular mail.

/s/ *Brian R. Martinotti*
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE